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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant: Mohamed El-Batal

Docket No.: LSI.96US01 (03-2331)

Application No.: 10/826,009

Examiner: Richard B. Franklin

Filed: April 16, 2004

Art Unit: 2181

For: SPEED MATCHING DATA STORAGE SYSTEM

APPLICANT INITIATED INTERVIEW REQUEST FORM

Applicant wishes to discuss the following issue with the Examiner in a Telephonic Interview scheduled for 03 October 2008 at 2 pm Eastern Standard Time, in order to advance the prosecution of the subject patent application:

In the Office Action dated 05 August 2008, made final, the Examiner rejected claims 1-18, under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,724,539 (Riggle et al.). The Examiner further found applicants' arguments filed 22 April 2008 unpersuasive.

Claim 1, as amended recites in part: "... creating a plurality of parallel data streams, each of said plurality of parallel data streams having an equal second throughput, said second throughput being smaller than said first throughput;" with similar recitations in claims 9 and 14. In the Examiner's rejection of claim 1, the Examiner referred to Col. 7, lines 16-19 in addressing this limitation. Applicant wishes to direct the Examiner's attention to Col. 7, lines 4-21 of Riggle, wherein it is stated that: "It is possible to format each disk surface 170 of a disk drive 120 to have a constant number of sectors on every track, as shown in FIG. 3. With sector boundaries 180 aligned radially throughout disk surface 170, each sector 190 is traversed by the read/write head 200 mounted on a positioner 210 and associated with the disk surface in the same period of time. Hence, the same amount of data, such as a 512 byte block, can be written to each track within every sector 190. This uniform sector format of disk surface 170 with the same number of data bits stored between any two consecutive sector boundaries 180 leads to a constant data transfer rate from any track regardless of its radius."

If a transfer unit is distributed among a stripe set of disk drives 130, all the drives can participate in the data movement simultaneously. In the ideal case of a fully parallel transfer the aggregate device bandwidth is thus equal to the individual disk bandwidth times the number of drives in the stripe set. However, the uniform sector format of FIG. 3 results in poor utilization of magnetic media storage capacity." (Emphasis added by applicant.).

Applicant wishes to point out that the limitation that each of the plurality of parallel data streams has an equal second throughput of subject claim 1 is rejected by Riggle as a "poor utilization of magnetic media storage capacity".

The Court in *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004) stated: "Appellants quote language from *In re Gurley* that "[a] reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." 27 F.3d at 553. Appellants argue that "the prior art disclosed alternatives to each of the claimed elements A [the perimeter], B [the shape of the surface], and C [the orientation of the surface]. Choosing one alternative necessarily means rejecting the other, i.e., following a path that is 'in a divergent direction from the path taken by applicant.'" This interpretation of our case law fails. The prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed in the '198 application. Indeed, in the case cited by appellants, *In re Gurley*, we held that the invention claimed in the patent application was unpatentable based primarily on a prior art reference that disclosed two alternatives, one of which was the claimed alternative. Accordingly mere disclosure of alternative designs does not teach away."

Applicant respectfully asserts that Riggle does not teach that each of the plurality of parallel data streams has an equal second throughput, as required by subject claims 1, 9, and 14. Rather, Riggle is simply stating that this is **NOT** the

invention since it results in **POOR** utilization of the magnetic media storage capacity.

In applicant's belief, the use of the word "poor" is criticism, disparagement and discrediting of the particular identified choice, and therefore, Riggle clearly teaches away from the present claimed invention.

Applicants therefore respectfully believe that Riggle does not anticipate independent claims 1, 9 and 14 of the present invention.

Respectfully submitted,

COCHRAN FREUND & YOUNG LLC

Date: 01 October 2008

By:



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